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CIVIL APPLICATION No. 15599 of 2005</B><BR><BR><B>For Approval and
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MANEKCHAND SHAH &amp;amp; MANHARLAL P SANGHVI - Petitioner(s)</B></FONT></FONT></FONT></P>
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UNIVERSITY &amp;amp; 2 - Respondent(s)</B></FONT></FONT></FONT></P>
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:</FONT></B> <BR><FONT COLOR="#000000">MR MITUL K SHELAT for
Petitioner No(s).: 1.</FONT><BR><FONT COLOR="#000000">MR AR THACKER
for Respondent No(s).: <FONT COLOR="#000000">1.</FONT><BR>MR.PK JANI
for Respondent No(s).: <FONT COLOR="#000000">2.</FONT><BR>MR. AD OZA
GOVERNMENT PLEADER for Respondent No(s).:
<FONT
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 A.R. Thacker learned advocate waives notice of Rule for the
 respondent No.1, Mr. P.K. Jani learned advocate waives notice of
 Rule for the respondent No.2 and Mr. A.D. Oza, Government Pleader
 waives notice of Rule for the respondent No.3. Upon their request,
 the matters are taken up for final hearing.</FONT></FONT></FONT></P>
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 the aforesaid petitions, common questions of law have been raised to
 the effect that what is the effect of refusal to grant SNo
 Objection Certificate (N.O.C.) by the State to an institution to
 which recognition has already been granted under Section 14(3)(a) of
 the National Council for Teacher Education Act, 1993 by N.C.T.E. and
 that the requirements as envisaged under the State Act namely
 Saurashtra University Act, 1965 whether can prevail upon the Central
 Act namely National Council for Teachers Education Act, 1993, in
 view of the provisions of Article 254 of the Constitution of India
 to be read with Entry No.66 of list-I of Schedule-VII to the
 Constitution with Entry No. 25 of list-III of Schedule-VII to the
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 the facts leading to the aforesaid petitions are summerised as
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 Petition No. 15598 of 2005 has been argued as lead matter. The
 petitioner Trust had applied for getting SNo Objection
 Certificate" to the respondent State of Gujarat for
 establishment and administration of the Private Unaided Non-minority
 Professional College for imparting training in Teacher Education
 (Popularly known as B.Ed. Education.). Initially, the State of
 Gujarat had not granted SNo Objection Certificate <SPAN STYLE="text-decoration:
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 therefore, the petitioners Trust had preferred Special Civil
 Applications bearing Special Civil Application No. 7252 of 2005 and

others. It was decided by this Court vide order dated 25.04.2005 to the effect that National Council for Teacher Education (hereinafter referred to as N.C.T.E.) shall consider the application of the petitioners under Section 14 of the National Council for Teacher Education Act, 1993 (hereinafter referred to as the Act, 1993). The National Council for Teacher Education (N.C.T.E.) has given recognition to the colleges run by the </SPAN></FONT></FONT></FONT>
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<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>petitioners vide their letter dated 27.06.2005 (Annexure P-4 to the memo of the petition No.15598 of 2005) with intake capacity of 100 students.</FONT></FONT></FONT></P>
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<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>3.3. It appears from the record of the case that initially, the State had not granted "No Objection Certificate" prior to getting a recognition similarly NOC has not been granted, even after the recognition from the National Council for Teachers Education (NCTE). The State is not inclined to give "No Objection Certificate". An administrative order has been passed by the Under Secretary, Education Department, State of Gujarat vide his letter dated 20.01.2005 (Annexure P-2) wherein it is stated that several teachers were unemployed and therefore, the colleges which are imparting B.Ed Education will not be given any SNo Objection Certificate.

Similarly on 9.06.2005, the Deputy Secretary of Education Department of respondent State has also informed to various Universities including the respondent No.1 University (vide Annexure P-6), that the State has decided, not to grant "No Objection Certificate to the new B.Ed. Colleges. Therefore, Saurashtra University passed a resolution dated 28.07.2005 (Annexure P-7) that unless the State Government gives N.O.C., the colleges imparting B.Ed. education cannot give admission to students. These annexures P-2, P-6 and P-7 are under challenge in these group of petitions.</FONT></FONT></FONT></P>
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<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>Learned Counsel appearing for the petitioners vehemently submitted that in view of the Judicial pronouncements by the Hon'ble Supreme Court in various decisions, including those in the case of Unni Krushanan reported in (1993)1 SCC 645, T.M.A. Pai Foundation case (2002)8 SCC 481 , Islamic Academic case (2003)6 SCC 697, St. Johns Teachers Training Institute V/s. Regional Director, National Council for the Teacher Education and another (2003)3 SCC 321, a right has been crystallized in favour of the petitioners to establish and administer Private Unaided Non-minority Professional Colleges. Thus, the right has been recognised under Article 19(1)(g) of the Constitution of India. The petitioners had applied initially to get "No Objection Certificate from the State for facilitating, in getting recognition, from the National Council for Teacher Education (NCTE) under the Act, 1993. The State had not granted such "No Objection Certificate". The petitioners preferred writ petitions before this Court and this Court directed, by allowing the petitions, the National Council for Teacher Education to decide the applications of the petitioners for grant or refusal of the recognition under Section 14 of the Act, 1993, despite the fact that there is no "No Objection Certificate" from the State of Gujarat. It is also submitted by the Senior advocate Shri N.D. Nanavati for the petitioners that upon considering various factors as envisaged under the Act, 1993 and the Rules and Regulations thereunder, and guidelines framed by N.C.T.E., the National Council for Teacher Education has granted recognition, vide their letter dated 27.06.2005 with an intake capacity of 100 students and therefore, the petitioners have applied for getting affiliation with the Saurashtra University under the Saurashtra University Act, 1965. Saurashtra University has also granted "No Objection Certificate" as per the Annexure P-1 to the memo of this petition. Even staff has also been approved by the Saurashtra University vide Annexure P-5. The State Government has not granted "No Objection Certificate" and therefore, the petitioners are unable to start their colleges. It is vehemently submitted by the learned Senior advocate for the petitioners that it was

absolutely shocking for the petitioners when they came to know that the Under Secretary and Deputy Secretary of the Education Department vide their letters dated 20.01.2005 and 9.06.2005, have refused N.O.C. merely because some teachers are unemployed. The "No Objection Certificate" has been decided not to be given by the State. The fundamental right vested in the petitioners, under Article 19 (1)(g) of the Constitution of India can neither be taken away nor can be abridged by an administrative decision and that too, by the Under Secretary of the Education Department. Even by the process of law, unreasonable restrictions can not be imposed and therefore, the decisions dated 20.01.2005 as well as 9.06.2005 taken by the Under Secretary as well as Deputy Secretary, Education Department, which are at Annxure P-2 and P-6 to the memo of the petition are patently illegal and dehorse the provisions of the Constitution of India. It is also been submitted by the Senior advocate for the petitioners that all are not getting education of B.Ed. Course for joining Government services. B.Ed. Education is not a mathematical co-relation of simply services of the Government. B.Ed. Education is educating the students how to impart the education, which the students may utilised for their own family or sometimes they may utilised this knowledge for any other purposes than doing service in the schools. Several tuition classes are there. They can get employment there also. The State of Gujarat's apprehension that several teachers are unemployed and they are abundantly available is absolutely uncalled for and unwarranted for not to allow the students, who are having volcanic desire to get education. Even they can migrate from one State to another after getting education. Therefore, unemployment in State cannot be a ground for not to allow, the youngsters to get knowledge of B.Ed. education. It has been stated in Para-2 of T.M.A. Pai's judgment, that it is merely because of unwillingness and inability of the State Government, the birth of private Educational Institutions have taken place. The right to get education specially for B.Ed. cannot be taken away under the pretext that number of teachers are abundantly available to the State. The students after getting B.Ed. education, may not preferred to be a teacher in the school. They may start their own profession or vocation like private teaching or coaching. It is also submitted by the Senior Advocate on behalf of the petitioners that in fact "No Objection Certificate" is required, only for facilitating N.C.T.E. in deciding the applications for getting recognition. Once it is given, the sanctity of "No Objection Certificate" is diluted. It is also submitted that the life of "No Objection Certificate" is only till getting recognition by National Council for Teachers Education under the Act, 1993. Once the recognition is given, the SNo Objection Certificate given or refused by the State Government, affects not, the petitioners institution. It is also submitted by the learned counsel appearing for the petitioner that "No Objection Certificate" to be given by the State can never being termed as a condition precedent, neither for recognition, nor, for the continuation of the institution for

imparting B.Ed. education. It is also submitted by the petitioner that there is no such provision under the Act, 1993 neither there is any provision under any regulations much less under the National Council for Teachers Education. Regulations,2002 for withdrawal of "No Objection Certificate" by the State. There is nothing like a concept of withdrawal of "No Objection Certificate". "No Objection Certificate" provides mere guidelines for grant or refusal of recognition by the National Council for Teachers Education, under Section 14 of the Act, 1993 and, therefore, it has been observed by the Hon'ble Supreme Court in a case between <B><U>St. Johns Teachers Training Institute V/s. Regional Director, National Council for the Teacher Education and another</U></B> reported in (2003)3 SCC 321 that National Council for Teachers Education can grant recognition even without "No Objection Certificate" from the Stat Government. "No Objection Certificate" mere helps the National Council for Teacher Education. Once recognition is granted, N.O.C. has either little value or no value. All powers are vested in National Council functioning under the Act, 1993, which is a Central Legislation enacted under Entry No. 66 of list I-Union list under seventh Schedule to the Constitution of India. The said Central Legislation shall prevail under Article 254 of the Constitution of India upon the Act, 1965 enacted either under old entry No. 11 of list II-State list or under new entry, Entry No. 25 of list-III the Concurrent list under seventh Schedule to the Constitution of India. If any of the provisions of the Act, 1965 are repugnant to the Act, 1993 to that extent, in view of the provisions of Article 254 of the Constitution of India, the provisions of the Act, 1965 shall be deemed to be void. The learned counsel appearing for the petitioner has relied upon the following decisions.</FONT></FONT></FONT></P>
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letter dated 9.06.2005 (Annexure P-6) and resolution of the
University dated 28.07.2005 (Annexure P-7) deserves to be quashed
and set aside.</FONT></FONT></FONT></P>
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have heard the learned counsel appearing for the State, who has
submitted that the State has all the powers, jurisdiction and
authority to grant "No Objection Certificate" and to
withdraw the same. It is submitted that the State has decided, as,
there are number of teachers available in the State for the academic
year 2005-2006, the "No Objection Certificate" is not to
be given for B.Ed. colleges. Number of teachers are more than, what
is required in the State of Gujarat and if the petitioner starts
some other institutions, they will be very useful to the State of
Gujarat. This is what has observed in the letter written by the
Under Secretary, Education Department dated 20.01.2005
(Annexure-P-2). Similarly, the letter written by the Deputy
Secretary, Education Department dated 9.06.2005 is nothing but a
reiteration of the earlier letter. "No Objection Certificate"
of the State is a very vital document, unless and until, there is a
"No Objection Certificate", the petitioner Trust can not
run the college imparting B.Ed. education. State has taken a
major-policy decision not to grant N.O.C. It is also submitted by
the learned counsel on behalf of the State that the refusal of the
"No Objection Certificate" is based upon the guidelines
issued by the National Council for Teachers Education. The State has
acted as per the guidelines issued by the National Council for
Teachers Education. The learned counsel for the State has also read
over the guidelines.</FONT></FONT></FONT></P>
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view of the aforesaid submissions, it is pointed out that looking to
the provisions of the Act, 1993 and the National Council for Teacher
Education Regulations, 2002, the decision taken by the Government is
binding upon the petitioner and the petitioner Trust cannot run
college imparting B.Ed. education. Nonetheless, it is submitted by
the learned counsel appearing for the State that the State has not
received any submissions from the respondent No.1 University for
affiliation under sub-section 4 of Section 34 of the Saurashtra
University, Act, 1965 and therefore, the petition is premature and
deserves to be dismissed.</FONT></FONT></FONT></P>
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<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>Mr. P.K. Jani learned advocate appearing for the respondent No.2 submitted that N.C.T.E. is a final apex body working under N.C.T.E. Act, 1993 for grant of recognition to the institutions imparting courses of training in teacher education. Once N.C.T.E. grants recognition under Section 14 of the Act, 1993, the refusal or withdrawal of SNo Objection Certificate under the Regulations, 2002, never affects the operation, implementation, effect or enforceability of the recognition. It is vehemently submitted by the learned advocate Mr. P.K. Jani that N.C.T.E. has got all powers for withdrawal of the recognition under Section 17 of the Act, 1993. If anybody is drawing the attention of the N.C.T.E. as to the violations of the provisions of the Act, 1993 or Rules made thereunder, with necessary evidences, N.C.T.E. has all powers to initiate actions against the institutions to which the recognition has been granted. But so long as the recognition is not withdrawn, it remains operative and all the consequential effects ought to be given as referred to in Section 14 of the Act, 1993, especially for grant of affiliation. There cannot be State Legislation or the State cannot issue Rules or frame policy against the provisions of the N.C.T.E. Act, 1993, which is a Central Act.</FONT></FONT></FONT></P>
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 to the aforesaid submissions of the counsels for both the sides and
 looking to the facts and circumstances of the case and the documents
 on record and the Judicial Pronouncements by the Hon'ble Supreme
 Court, the letters which are issued by the State Government dated
 20.01.2005 (Annexure P-2) and dated 19.06.2005 (Annexure P-6) and
 consequently the decision taken by the University dated 28.07.2005
 (Annexure P-7) will not affect the petitioner for getting
 affiliation with respondent No.1 University in view of the following
 facts and reasons.</FONT></FONT></FONT></P>
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 <FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>I.
 As per Section 14 of the National Council for Teachers Education
 Act, 1993 to be read with Regulation 6 of the National Council for
 Teacher Education Regulations, 2002, once the recognition is given
 by the National Council for Teachers Education, as envisaged under
 the Act, &quot;No Objection Certificate&quot;, which is referred to
 in a Regulation 6 of the Regulations, 2002 is of no consequence at
 all. The Act, 1993 has been enacted under the Entry No. 66 of the
 list-I, Union list, under Schedule VII to the Constitution of India.
 Section 14 of the Act, 1993 empowers the National Council for
 Teachers Education to give recognition to institutions. Section 14
 thereof reads as under:- </FONT></FONT></FONT>
 </P>
 <P ALIGN=JUSTIFY STYLE="margin-right: 0.6in; line-height: 100%; text-decoration: none">
 <FONT COLOR="#000000">S<FONT SIZE=4><FONT FACE="Courier, monospace"><B>14.</B>
 <B>Recognition of institutions offering course or training in
 teacher education.</B></FONT></FONT></FONT></P>
 <P ALIGN=JUSTIFY STYLE="margin-right: 0.6in; font-weight: medium; line-height: 100%;
text-decoration: none">
 <FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>(1)
 Every institution offering or intending to offer a course or
 training in teacher education on or after the appointed day may, for
 grant of recognition under this Act, make an application to the
 Regional Committee concerned in such form and in such manner as may
 be determined by regulations:</FONT></FONT></FONT></P>
 <P ALIGN=JUSTIFY STYLE="margin-right: 0.6in; line-height: 100%; text-decoration: none">
 <FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>Provided
 that an institution offering a course or training in teacher
 education immediately before the appointed day, shall be entitled to
 continue such course or training for a period of six months, if it
 has made an application for recognition within the said period and
 until the disposal of the application by the Regional
Committee.</FONT></FONT></FONT></P>
 <P ALIGN=JUSTIFY STYLE="margin-right: 0.6in; font-weight: medium; line-height: 100%;
text-decoration: none">
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<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>(2)
The fee to be aid along with the application under sub-section (1)
shall be such as may be prescribed.</FONT></FONT></FONT></P>
<P ALIGN=JUSTIFY STYLE="margin-right: 0.6in; font-weight: medium; line-height: 100%;
text-decoration: none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>(3)
On receipt of an application by the Regional Committee from any
institution under sub-section (1), and after obtaining from the
institution concerned such other particulars as it may consider
necessary, it shall,-</FONT></FONT></FONT></P>
<P ALIGN=JUSTIFY STYLE="margin-right: 0.6in; font-weight: medium; line-height: 100%;
text-decoration: none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>(a)
If it is satisfied that such institution has adequate financial
resources, accommodation, library, qualified staff, laboratory and
that it fulfills such other conditions required for proper
functioning of the institution for a course or training in teacher
education, as may be determined by regulations, <U>pass an order
granting recognition to such</U> institution, subject to such
conditions as may be determined by regulations; or</FONT></FONT></FONT></P>
<P ALIGN=JUSTIFY STYLE="margin-right: 0.6in; font-weight: medium; line-height: 100%;
text-decoration: none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>(b)
if it is of the opinion that such institution does not fulfill the
requirements laid down in sub-clause (a), <U>pass an order refusing
recognition</U> to such institution for reasons to be recorded in
writing:</FONT></FONT></FONT></P>
<P ALIGN=JUSTIFY STYLE="margin-right: 0.6in; font-weight: medium; line-height: 100%;
text-decoration: none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>Provided
that before passing an order under sub-clause (b), the Regional
Committee shall provide a reasonable opportunity to the concerned
institution for making a written representation.</FONT></FONT></FONT></P>
<P ALIGN=JUSTIFY STYLE="margin-right: 0.6in; font-weight: medium; line-height: 100%;
text-decoration: none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>(4)
Every order granting or refusing recognition to an institution for a
course or training in teacher education under sub-section (3) shall
be published in the Official Gazette and communicated in writing for
appropriate action to such institution and to the concerned
examining body, the local authority or the State Government and the
Central Government.</FONT></FONT></FONT></P>
<P ALIGN=JUSTIFY STYLE="margin-right: 0.6in; font-weight: medium; line-height: 100%;
text-decoration: none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>(5)
Every institution, in respect of which recognition has been refused
shall discontinue the course or training in teacher education from
the end of the academic session next following the date of receipt
of the order refusing recognition passed under clause (b) of
sub-section (3).</FONT></FONT></FONT></P>
<P ALIGN=JUSTIFY STYLE="margin-right: 0.6in; font-weight: medium; line-height: 100%;

text-decoration: none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>(6)
<U>Every examining body shall,</U> on receipt of the order under
sub-section (4),-</FONT></FONT></FONT></P>
<P ALIGN=JUSTIFY STYLE="margin-right: 0.6in; font-weight: medium; line-height: 100%;
text-decoration: none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>(a)<U>grant
affiliation to the institution, where recognition has been granted</U>;
or </FONT></FONT></FONT>
</P>
<P ALIGN=JUSTIFY STYLE="margin-right: 0.6in; font-weight: medium; line-height: 100%;
text-decoration: none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>(b)
cancel the affiliation of the institution, where recognition has
been refused. </FONT></FONT></FONT>
</P>
<P ALIGN=RIGHT STYLE="margin-right: 0.6in; font-weight: medium; line-height: 100%;
text-decoration: none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>(Emphasis
Supplied) </FONT></FONT></FONT>
</P>
<P ALIGN=JUSTIFY STYLE="margin-right: 0.02in; font-weight: medium; line-height: 200%;
text-decoration: none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>Regulation
6 of the N.C.T.E. Regulations,2002 reads as under:</FONT></FONT></FONT></P>
<P ALIGN=JUSTIFY STYLE="margin-right: 1.08in; line-height: 100%; text-decoration:
none">
<FONT COLOR="#000000">S<B><FONT SIZE=4><FONT FACE="Courier, monospace">6.
Requirement of No Objection Certificate from the State
Government/U.T. Administration.</FONT></FONT></B></FONT></P>
<P ALIGN=JUSTIFY STYLE="margin-right: 1.08in; line-height: 100%; text-decoration:
none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>(i)
Application from every institution seeking recognition to start a
course or training in teacher education or from an existing
institution seeking permission to start a new course or training
and/or increase in intake shall be accompanied by a No Objection
Certificate (NOC) from the State or Union Territory in which the
institution is located.</FONT></FONT></FONT></P>
<P ALIGN=JUSTIFY STYLE="margin-right: 1.08in; line-height: 100%; text-decoration:
none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>(ii)
<U>The endorsement of the State Government</U>/UT Administration in
regard to issue of No Objection Certificate (NOC) <U>will be
considered by the</U> Regional Committee while taking a decision on
the application for recognition.</FONT></FONT></FONT></P>
<P ALIGN=JUSTIFY STYLE="margin-right: 1.08in; line-height: 100%; text-decoration:
none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>(iii)
If the NOC issued by the State Government/UT Administration does not
indicate the intake, it will be for the Regional Committee to

determine the intake taking into account the infrastructural and instructional facilities available in the institution and other relevant provisions in the Norms and Standards applicable to the relevant teacher training programme.</FONT></FONT></FONT></P>
<P ALIGN=JUSTIFY STYLE="margin-right: 1.08in; line-height: 100%; text-decoration: none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>(iv) The NOC issued by the State Government/UT Administration will remain valid till such time the State Government/UT Administration withdraws/cancels it.</FONT></FONT></FONT></P>
<P ALIGN=JUSTIFY STYLE="margin-right: 1.08in; line-height: 100%; text-decoration: none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>(v) The NOC will be deemed to have lapsed if the institution fails to get recognition within three years from the date of its issue.</FONT></FONT></FONT></P>
<P ALIGN=JUSTIFY STYLE="margin-right: 1.08in; line-height: 100%; text-decoration: none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>(vi) Requirement of NOC shall not apply to Government Institutions.</FONT></FONT></FONT></P>
<P ALIGN=JUSTIFY STYLE="margin-right: 1.08in; line-height: 100%; text-decoration: none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>(vii) Requirement of NOC shall not pay to University Departments for taking up innovative teacher education programmes for a maximum intake of 50 (fifty only). The question as to whether a programme is innovative will be decided by the concerned Regional Committee. </FONT></FONT></FONT>
</P>
<P ALIGN=RIGHT STYLE="margin-right: 1.08in; line-height: 100%; text-decoration: none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>(Emphasis Supplied). </FONT></FONT></FONT>
</P>
<P ALIGN=JUSTIFY STYLE="font-weight: medium; line-height: 200%; text-decoration: none">
</P>
<P ALIGN=JUSTIFY STYLE="font-weight: medium; line-height: 200%; text-decoration: none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>In view of the aforesaid provision powers to grant recognition has been vested in the National Council for Teachers Education. SNo Objection Certificate by the State is required to facilitate the N.C.T.E. in performing its functions as envisaged under Section 12 of the Act, 1993. While preferring an application before the National Council for Teachers Education (N.C.T.E.), for getting recognition as per Regulation-6 of the National Council for Teachers Education Regulations, 2002, "No Objection Certificate" from the State is required to be annexed. The purpose of "No Objection Certificate" is, to aware, the N.C.T.E. about the facts of the institutions. State has no power to grant any recognition. State can provide the necessary data to the N.C.T.E. but the vital decision has to be taken by the N.C.T.E. Thus, "No Objection Certificate" cannot be evaluated at higher footing than the recognition itself. Upon plain reading of Section 14 of the Act, 1993 and Regulation 6 of the N.C.T.E. Regulations, 2002, the

life or enforceability of recognition is not dependent upon life of N.O.C. Thus, once a recognition is given, there is no importance of "No Objection Certificate" as envisaged under the Act, 1993.</FONT></FONT></FONT></P>

<P ALIGN=JUSTIFY STYLE="font-weight: medium; line-height: 200%; text-decoration: none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>ii. As per Regulation-6 of the National Council for Teachers Education Regulations, 2002, the applicant should annex "No Objection Certificate" of the State with its application, to N.C.T.E., for getting the recognition and it is a duty of National Council for Teachers Education to consider the "No Objection Certificate". <U>"No Objection Certificate" is not a sine qua non, for deciding an application for recognition.</U> It has been held by the Hon'ble Supreme Court in case of <B><U>St. Johns Teachers Training Institute V/s. Regional Director, National Council for the Teacher Education and another reported in (2003)3 SCC 321</U></B> especially </FONT></FONT></FONT>
</P>

<P ALIGN=JUSTIFY STYLE="font-weight: medium; line-height: 200%; text-decoration: none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>in paragraph 19 thereof as under:-</FONT></FONT></FONT></P>

<P ALIGN=JUSTIFY STYLE="margin-right: 1.09in; line-height: 100%; text-decoration: none">
</P>

<P ALIGN=JUSTIFY STYLE="margin-right: 1.09in; line-height: 100%; text-decoration: none">
<FONT COLOR="#000000">S<FONT SIZE=4><FONT FACE="Courier, monospace"><B>19. </B>Regulation 6(ii)of these Regulations provides that the endorsement of the State Government/Union Territory Administration in regard to issue of <U>NOC will be considered by the Regional Committee</U> while taking a decision on the application for recognition. This provision shows that even if the NOC is not granted by the State Government or Union Territory concerned and the same is refused, the entire matter will be examined by the Regional Committee while taking a decision on the application for recognition. <U>Therefore, the grant or refusal of an NOC by the State Government or Union Territory is not conclusive or binding</U> and the views expressed by the State Government will be considered by the Regional Committee while taking the decision on the application for grant of recognition. In view of these new Regulations the challenge raised to the validity of Regulations 5(e) and (f) has been further whittled down. The role of the State Government is certainly important for <U>supplying the requisite data which is essential for formation of opinion by the Regional Committee</U> while taking a decision under sub-section (3) of Section 14 of the Act. Therefore no exception can be taken to such a course of action.</FONT></FONT> </FONT>
</P>

<P ALIGN=RIGHT STYLE="margin-right: 1.09in; line-height: 100%; text-decoration: none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>(Emphasis Supplied)</FONT></FONT></FONT></P>

<P ALIGN=JUSTIFY STYLE="font-weight: medium; line-height: 200%; text-decoration: none">
</P>
<P ALIGN=JUSTIFY STYLE="font-weight: medium; line-height: 200%; text-decoration: none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>It has been interpreted by the Hon'ble Supreme Court, the effect of regulation-6 (ii) of the Regulations, 2002 that Seven if the "No Objection Certificate" is not granted by the State Government or by the Union Territory concerned, and the same is refused, the entire matter will be examined by the Regional Committee while taking the decision on the application for recognition. This makes explicitly clear the importance of "No Objection Certificate". The grant or refusal of the "No Objection Certificate" will be considered by the National Council for Teachers Education. The final authority is National Council for Teachers Education under the Central Legislation enacted in pursuance of Entry 66 of the list-I. It is also been emphasized by the Hon'ble Supreme Court that SThe grant or refusal of "No Objection Certificate" by the State Government or Union Territory is no conclusive or binding. Thus, this further reflects the importance of N.O.C. Neither the grant of, "No Objection Certificate", nor, the refusal of, "No Objection Certificate" is binding to National Council for Teachers Education. The National Council for Teachers Education is a body constituted under the Act, 1993, which has power to grant recognition under Section 14 thereof and the "No Objection Certificate" of the state if at all it is granted or refused, will provide the data over and above what is supplied by the applicant, for consideration of the application for recognition. Thus, the decision of State, granting or refusal of N.O.C., is pre-recognition requirement. N.O.C. facilitates N.C.T.E. in decision making process. N.O.C. supplements the data. N.O.C. is required till N.C.T.E. decides application for recognition, but, once the recognition is given by N.C.T.E., there is no requirement of N.O.C. for continuation of Recognition, given Under Section 14 of the Act, 1993. Recognition, can remain valid, even in absence of N.O.C. It will be presumed by this Court, that, N.C.T.E. must have considered the provisions of the Act, 1993, of the Regulations, 2002 and of its own guidelines and then only N.C.T.E. must have granted recognition. After grant of recognition, N.O.C. cannot be refused or withdrawn on the basis of very same guidelines. The Act, 1993 has in-built mechanisms for grant of recognition. As per Section 13 of the act, 1993, the Council can cause inspection and as per Section 17 of the Act, 1993 the Council can withdraw the recognition. There is a direct consequence upon affiliation, once recognition is withdrawn, as per Section 16 and 17(3) of the Act, 1993. Thus, there are enough in-built checks upon institution once recognition is given. It is a recognition (granted by N.C.T.E. under central enactment), which is carrying burden on its shoulders, of expectations to be fulfilled as desired by the N.C.T.E. Act, 1993 and not the N.O.C. of the State. The life or validity of recognition is not dependent upon life of N.O.C. Once the recognition is given, by N.C.T.E., the refusal or

withdrawal of N.O.C. by the State, cannot cause any effect upon Recognition. Effect of grant recognition has been referred Under Sections 14(6) and 16 of the Act, 1993. Effect of withdrawal of recognition has been referred U/s. 16 and U/s. 17(3) of the Act, 1993. There is no consequence, of refusal or withdrawal of, N.O.C. of the State, as per the Act, 1993. There is no effect, of refusal or withdrawal of N.O.C. of State, upon recognition, once it is given by N.C.T.E. under the Act, 1993. The NOC supplements the facts which are given by the applicant to the National Council for Teachers Education for proper consideration of the application for recognition, but it never supplements recognition. It cannot be equated with recognition itself.</FONT></FONT></FONT></P>
<P ALIGN=JUSTIFY STYLE="font-weight: medium; line-height: 200%; text-decoration: none">
</P>
<P ALIGN=JUSTIFY STYLE="font-weight: medium; line-height: 200%; text-decoration: none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>iii. In view of the fact of the present case, the National Council for Teachers Education has already granted recognition under Section 14 of the Act, 1993 vide their letter dated 27.06.2005 (Annexure P-4 to the memo of the petition) the in take capacity fixed by the National Council for Teachers Education is 100 students for the academic year 2005-2006. Thus, the National Council for Teachers Education has considered all the aspects as envisaged by the Act, 1993, the Regulations,2002 and the guidelines issued by N.C.T.E. itself. This Court will presume that the National Council for Teachers Education has considered all the guidelines, regulations, and provisions of the Act, 1993. Institution must be fulfilling all the norms and criteria fixed under the Act, the regulations, 2002 and the guidelines and thereafter only, the recognition must have been given under Section 14 of the Act,1993. What is granted by the N.C.T.E. under Central Legislation cannot be taken away by the State by refusing or withdrawing the N.O.C., and that too, after grant of recognition and more so by mere administrative letters dated 20.01.2005 and 9.06.2005, which are at Annexure P-2 and P-6 to the memo of this petition.</FONT></FONT></FONT></P>
<P ALIGN=JUSTIFY STYLE="font-weight: medium; line-height: 200%; text-decoration: none">
</P>
<P ALIGN=JUSTIFY STYLE="font-weight: medium; line-height: 200%; text-decoration: none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>iv. The right to establish and administer, the educational institution, is emerging from the Article 19(1)(g) of the Constitution of India as per decision rendered by Hon'ble S.C., in case of T.M.A. Pai (Supra). It has been observed in paragraph-2, 48, 49 and 50 of T.M.A. Pai's judgment that the Government control in the form of rules and regulations is an unnecessary and unproductive load on the back of the institutions. The Government must get off their back and the institutions should be allowed to provide quality education uninterpreted by unnecessary rules and regulations, laid down by bureaucracy for its own self-importance. Paragraph-2 of the aforesaid judgment, reads as under:</FONT></FONT></FONT></P>
<P ALIGN=JUSTIFY STYLE="margin-right: 1.1in; line-height: 100%; text-decoration: none">

<FONT COLOR="#000000">S<FONT SIZE=4><FONT FACE="Courier, monospace">2.
It is in this scenario where there is a lack of quality education
and adequate number of schools and colleges that private educational
institutions have been established by educationists, philanthropists
and religious and linguistic minorities. Their grievance is that the
unnecessary and unproductive load on their back in the form of
governmental control, by way of rules and regulations, has thwarted
the progress of quality education. It is their contention that the
Government must get off their back, and that they should be allowed
to provide quality education uninterrupted by unnecessary rules and
regulations, laid down by the bureaucracy for its own
self-importance. The private educational institutions, both aided
and unaided, established by minorities and non-minorities, in their
desire to break free of the unnecessary shackles put on their
functioning as modern educational institutions and seeking to impart
quality education for the benefit of the community for whom they
were established, and others, have filed the present writ petitions
and appeals asserting their right to establish and administer
educational institutions of their choice unhampered by rules and
regulations that unnecessarily impinge upon their autonomy.</FONT></FONT></FONT></P>
<P ALIGN=JUSTIFY STYLE="margin-right: 0.02in; font-weight: medium; line-height: 200%;
text-decoration: none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>It
is been held by the Hon'ble Supreme Court that private education is
one of the most dynamic and a fastest growing segment of the post
secondary education. Private Unaided Non-minority Institution has
been established in the society mainly due to unwillingness or
inability, of the Government, to cater the need of the society, of
getting higher education. The limited means and unlimited wants has
given birth to the Private Unaided Educational Institutions.
Paragraphs 48, 49 and 50 of the aforesaid judgment, read as
under:</FONT></FONT></FONT></P>
<P ALIGN=JUSTIFY STYLE="margin-right: 1.1in; line-height: 100%; text-decoration: none">
<FONT COLOR="#000000">S<FONT SIZE=4><FONT FACE="Courier, monospace">48.
Private education is one of the most dynamic and fastest-growing
segments of post-secondary education at the turn of the twenty-first
century. A combination of unprecedented demand for access to higher
education and the inability or unwillingness of the Government to
provide the necessary support has brought private higher education
to the forefront. Private institutions, with a long history in many
countries, are expanding in scope and number, and are becoming
increasingly important in parts of the world that relied almost
entirely on the public sector.</FONT></FONT></FONT></P>
<P ALIGN=JUSTIFY STYLE="margin-right: 1.1in; font-weight: medium; line-height: 100%;
text-decoration: none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>49.
Not only has demand overwhelmed the ability of the Governments to
provide education, there has also been a significant change in the
way that higher education is perceived. The idea of an academic
degree as a Sprivate good that benefits the individual rather
than a Spublic good for society is now widely accepted. The

logic of today's economics and an ideology of privatization have
contributed to the resurgence of private higher education, and the
establishing of private institutions where none or very few existed
before.</FONT></FONT></FONT></P>
<P ALIGN=JUSTIFY STYLE="margin-right: 1.1in; font-weight: medium; line-height: 100%;
text-decoration: none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>50.
The right to establish and administer broadly comprises the
following rights;</FONT></FONT></FONT></P>
<P ALIGN=JUSTIFY STYLE="margin-right: 1.1in; font-weight: medium; line-height: 100%;
text-decoration: none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>(a)
to admit students;</FONT></FONT></FONT></P>
<P ALIGN=JUSTIFY STYLE="margin-right: 1.1in; font-weight: medium; line-height: 100%;
text-decoration: none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>(b)
to set up a reasonable fee structure;</FONT></FONT></FONT></P>
<P ALIGN=JUSTIFY STYLE="margin-right: 1.1in; font-weight: medium; line-height: 100%;
text-decoration: none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>(c)
to constitute a governing body;</FONT></FONT></FONT></P>
<P ALIGN=JUSTIFY STYLE="margin-right: 1.1in; font-weight: medium; line-height: 100%;
text-decoration: none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>(d)
to appoint staff (teaching and non-teaching);and</FONT></FONT></FONT></P>
<P ALIGN=JUSTIFY STYLE="margin-right: 1.1in; font-weight: medium; line-height: 100%;
text-decoration: none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>(e)
to take action if there is dereliction of duty on the part of any
employees.</FONT></FONT></FONT></P>
<P ALIGN=JUSTIFY STYLE="margin-right: 0.03in; font-weight: medium; line-height: 200%;
text-decoration: none">
</P>
<P ALIGN=JUSTIFY STYLE="margin-right: 0.03in; font-weight: medium; line-height: 200%;
text-decoration: none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>Thus
from the aforesaid paragraphs, it is crystal clear that right to
establish and administer, the educational institutions includes
right to admit the students. The petitioners trust want to run the
college which can impart B.Ed. education. It is also been given
recognition by the National Council for Teacher Education under the
Central Legislation. The Saurashtra University has also given "No
Objection Certificate" dated 9.9.2004(Annexure-P-1) even the
staff has also been approved by the respondent No.1 Saurashtra
University but, the two letters written by the Under Secretary and
Deputy Secretary which are at Annexure P-2 and P-6 respectively are
not allowing the petitioner for imparting B.Ed. Education. The
respondent No.1 Saurashtra University has consequently resolved
dated 28.07.2005 (Annexure P-7) not to allow the college run by the
petitioners trust to admit the students. All freedoms are not free.
Reasonable restrictions have already been envisaged under Article

19(6)for enjoyment of the fundamental rights under Article 19(1)(g) but the same can be imposed by enacting a law. In the present case, freedom guaranteed under Article 19(1)(g) to the petitioner cannot be taken away by the two letters issued by the State. When there is a Central Legislation, neither the State law nor its rules, regulations or policy can be repugnant to the Central Legislation, otherwise, effect will it carry, the one which is already pronounced under Article 254 of the Constitution of India. To the extent to which they are repugnant, they are void. If there is any repugnancy between the State Legislation and the Central Legislation to that extent, the State Legislation will be void. As stated hereinabove, looking to the facts of the present case, the State has not enacted any law for taking the decisions which are referred to at Annexure P-2 and P-6, and therefore, looking to the provisions of the Act, 1993, these two annexures will not be given any effect to, so far as institution of the petitioners Trust is concerned, especially when National Council for Teachers Education has already given recognition and so long as a recognition is continued. Recognition has not been withdrawn as per Section 17 of the Act, 1993 and there is no automatic withdrawal of recognition.</FONT></FONT></FONT></P>
</OL>
<P ALIGN=JUSTIFY STYLE="margin-right: 0.03in; font-weight: medium; line-height: 200%; text-decoration: none">

</P>
<OL START=6>
<P ALIGN=JUSTIFY STYLE="margin-right: 0.03in; font-weight: medium; line-height: 200%; text-decoration: none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>v. It is also conveniently contended by the learned advocate appearing for the State that it has not received any application from the Saurashtra University for affiliation especially under Section 34(4) of the Saurashtra University Act, 1965, whereas learned counsel appearing for the Saurashtra University submitted that the University has already sent its report U/s. 34 to the State stating positive opinion for grant of affiliation vide letter dated 26.02.2005. As stated hereinabove and in view of the Judicial interpretation, once the recognition is granted under Section 14 of the Act, 1993, the refusal or withdrawal of "SNo Objection Certificate" by the State, cannot affect the recognition and as per Section 14(6) of the Act, 1993, the examining body (in the present case respondent No.1 University) has to grant affiliation.</FONT></FONT></FONT></P>
<P ALIGN=JUSTIFY STYLE="font-weight: medium; line-height: 200%; text-decoration: none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>vi. It has been decided by the Hon'ble Supreme Court in case of <B><U>Jaya Gokul Educational Trust V/s. Commissioner & Secretary to Government Higher Education Department, Thiruvanathapuram, Kerala State and another and Diocese of Kanjirapally V/s. Commissioner-Cum-Secretary, Higher Education and others reported in (2000)5 SCC 231</U></B> in similarly situated case wherein also the

State of Tamil Nadu had refused to grant approval to the college run by the appellant on the basis of 'major policy decision'. In that case also A.I.C.T.E. had granted recognition the Central legislation viz. A.I.C.T.E. Act, 1987. After comparing All India Council for Technical Education Act, 1987 and A.I.C.T.E. Regulations with State legislation viz. Kerala University Act, directed the examining body to consider the application for affiliation on the basis of approval granted by A.I.C.T.E. (Para 31.). The stand taken by the State of Kerala as per para 7 and relevant part of para 24 as under:</FONT></FONT></FONT></P>
<P ALIGN=JUSTIFY STYLE="line-height: 100%; text-decoration: none"><FONT COLOR="#000000">S<FONT SIZE=4><FONT FACE="Courier, monospace">7. On the other hand, learned Additional Solicitor General, Shri Mukul Rohtagi contended on behalf of the State of Kerala that the <U>Spolicy</U> of the State of Kerala at the relevant time was not to grant approvals for establishment of more engineering colleges in the State. The Government had clarified in the counter-affidavit filed in the High Court that the Government <U>Swas not in a position</U> to take a decision to start new engineering colleges, without properly assessing the <U>necessity of more engineering graduates from the State and without exploring the possibility of employment opportunities in the country as a whole.</U> Also there were four engineering colleges at Kannur, Trichur, Kottayam and Thiruvananthapuram Districts and three private (aided) engineering colleges at Palakkad. Ernakulam (Kothamangalam) and Kollam Districts. Model Engineering College, Ernakulam was a self-financing engineering college and others were the colleges at Changannur and Pathansamthitta and there was a self-financing engineering college at Kasargode. There were also two unaided engineering colleges at Mallappuram and Thiruvananthapuram. Even though the appellant Trust was not seeking aid from the Government <U>and even assuming that it was financially self-sufficient, it would not be in the interests of the students and employment, to permit new engineering colleges to be established. Thus the government policy was not to grant fresh approvals. If more approvals were granted, it might lead to commercialisation of education.</U> </FONT></FONT></FONT>
</P>
<P ALIGN=RIGHT STYLE="line-height: 100%; text-decoration: none"><FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>(Emphasis Supplied)</FONT></FONT></FONT></P>
<P ALIGN=JUSTIFY STYLE="line-height: 100%; text-decoration: none"><FONT COLOR="#000000">S<FONT SIZE=4><FONT FACE="Courier, monospace">24.The State Government in its counter then gave the names of the existing colleges and their location. We have already referred to these details. It also observed that there was widespread students protests against starting new colleges and it was necessary to be cautious in the matter of starting new engineering colleges. It was stated that Government could not initially take a decision on the appellant's affiliation because of elections and that the matter being one of <U>Smajor policy</U> the Government had subsequently Staken a policy decision not to sanction any affiliation to such colleges either in the private sector or in the

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 public sector for this year. <U>These are stated to be the
 reasons for the Government's rejection by letter dated 16.8.1996.</U>
 </FONT></FONT></FONT>
 </P>
 <P ALIGN=RIGHT STYLE="line-height: 100%; text-decoration: none"><FONT
COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>(Emphasis
 Supplied)</FONT></FONT></FONT></P>
 <P ALIGN=JUSTIFY STYLE="font-weight: medium; line-height: 200%; text-decoration: none">
 <FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>The
 Hon'ble Supreme Court considered the aforesaid submissions of State,
 comparing them with Central enactment in para 19 and 25 reads as
 under:</FONT></FONT></FONT></P>
 <P ALIGN=JUSTIFY STYLE="margin-right: 1.09in; line-height: 100%; text-decoration:
none">
 <FONT COLOR="#000000">S<FONT SIZE=4><FONT FACE="Courier, monospace">19.
 Learned Additional Solicitor General stated before us that there was
 no statute in the State of Kerala corresponding to the Tamil Nadu
 Act of 1976 nor any other law which specifically required the
 Sapproval of the State Government. It was however contended
 that the T.N. case was concerned only with the standards of
 education and as to who could fix them. We are not inclined to
 agree. We have already pointed out under Point 1 that in T.N. case,
 Section 10(k) of the AICTE Act was referred to and the power of
 Sapproval for establishment a technical institution was
 considered. <U>In our opinion, even if there was a State law in the
 State of Kerala which required the approval of the State Government
 for establishment technical institutions,</U> such a law would have
 been repugnant to the AICTE Act and <U>void to that extent, as held
 in T.N. case.</U></FONT></FONT></FONT></P>
 <P ALIGN=RIGHT STYLE="margin-right: 1.09in; line-height: 100%; text-decoration: none">
 <FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>(Emphasis
 Supplied)</FONT></FONT></FONT></P>
 <P ALIGN=JUSTIFY STYLE="margin-right: 1.09in; line-height: 100%"><SPAN STYLE="text-
decoration: none"><FONT COLOR="#000000"><SPAN STYLE="text-decoration: none">S<FONT
SIZE=4><FONT FACE="Courier, monospace">25.
 As already stated, in view of the judgment of this Court in T.N.
 case it is obvious that there is no need to approach the State of
 Kerala for its approval for starting the engineering colleges. There
 is no power vested in the State under any State law to grant
 approval </FONT></FONT></SPAN><FONT SIZE=4><FONT FACE="Courier, monospace"><U>and
 even if it was so vested, it would have been void in view of T.N.
 case. This ground of repugnancy alone would be sufficient to quash
 the State Government's letter dated 16.08.1996 refusing to give
 their approval.</U></FONT></FONT></FONT></SPAN>
 </P>
 <P ALIGN=RIGHT STYLE="margin-right: 1.09in; line-height: 100%; text-decoration: none">
 <FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>(Emphasis
 Supplied)</FONT></FONT></FONT></P>
</OL>
<OL START=0>
 <P ALIGN=JUSTIFY STYLE="margin-right: 0.02in; font-weight: medium; line-height: 200%;
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text-decoration: none">
 <FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>Thus,
 "No Objection Certificate" of the State will not affect
 the recognition given by N.C.T.E. under the Central Legislation. The
 reason given for the refusal of approval or "No Objection
 Certificate" in the case decided by the Hon'ble Supreme Court,
 was the policy decision taken by the Government. The Hon'ble Supreme
 Court has observed in paragraph 27 and 28 reads as under:</FONT></FONT></FONT></P>
</OL>
<P ALIGN=JUSTIFY STYLE="margin-left: 0.51in; margin-right: 1.1in; line-height: 100%;
text-decoration: none">
<FONT COLOR="#000000">S<FONT SIZE=4><FONT FACE="Courier, monospace">27.
The so-called Spolicy of the State as mentioned in the
counter-affidavit filed in the High Court was not a ground for
refusing approval. In Thirumuruga Kirupananda & Variyar
Thavathiru Sundara Swamigal Medical Educational & Charitable
Trust v. State of T.N. which was a case relating to medical education
and which also related to the effect of a Central law upon a law made
by the State under Entry 25 List III, it was held (at SCC p. 35, para
34) that the </FONT></FONT></FONT>
</P>
<P ALIGN=JUSTIFY STYLE="margin-left: 0.51in; margin-right: 1.1in; line-height: 100%;
text-decoration: none">
<FONT COLOR="#000000">S<FONT SIZE=4><FONT FACE="Courier, monospace">essentiality
certificate cannot be withheld by the State Government on any policy
consideration because the policy in the matter of establishment of a
new medical college now rests with the Central Government
alone.(emphasis supplied)</FONT></FONT></FONT></P>
<P ALIGN=JUSTIFY STYLE="margin-left: 0.51in; margin-right: 1.1in; font-weight: medium;
line-height: 100%; text-decoration: none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4><U>Therefore,
the State could not have any Spolicy outside the AICTE Act</U>
and indeed if it had a policy, it should have placed the same before
AICTE and that too before the latter granted permission. Once that
procedure laid down in the AICTE Act and Regulations had been
followed under Regulation 8(4), and the Central Task Force had also
given its favourable recommendations, <U>there was no scope for any
further objection or approval by the State.</U> We may however add
that if thereafter, any fresh facts came to light after an approval
was granted by AICTE or if the State felt that some conditions
attached to the permission and required by AICTE to be complied with,
were not complied with, then the State Government could always write
to AICTE, to enable the latter to take appropriate action.</FONT></FONT></FONT></P>
<P ALIGN=JUSTIFY STYLE="margin-left: 0.51in; margin-right: 1.1in; font-weight: medium;
line-height: 100%; text-decoration: none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>Decision
of University in not granting further or final affiliation wrong on
merits.</FONT></FONT></FONT></P>
<P ALIGN=JUSTIFY STYLE="margin-left: 0.51in; margin-right: 1.1in; font-weight: medium;
line-height: 100%; text-decoration: none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>28

Admittedly, the University's inspection report was in favour of the appellant. This is clear from the appellant's letter dated 31.5.1995 to the State Government. The only requirement as per Statute 9(7) was for the University to obtain the Sviews of the State Government. Obtaining the Sviews of the State Government, as already stated, did not amount to obtaining its Sapproval. <U>Procedure and conditions for affiliation could not be inconsistent with the provisions of the Central Act, in particular Section 10(k) of the Regulation,</U> and the University could not seek approval of the Government. The university was also one of the agencies consulted by the council of AICTE under Regulation 8. <U>Once that was over, and approval was granted by AICTE,</U> if there was any default on the part of the College in compliance with the conditions of approval, the only remedy for the University was to bring those facts to the notice of AICTE so that the latter could take appropriate action.</FONT></FONT></FONT></P>

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<P ALIGN=RIGHT STYLE="margin-right: 1.1in; font-weight: medium; line-height: 100%; text-decoration: none">

<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>(Emphasis Supplied)</FONT></FONT></FONT></P>

<P ALIGN=JUSTIFY STYLE="font-weight: medium; line-height: 200%; text-decoration: none">

<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>In the present petition, when there is a Central Legislation, which empowers N.C.T.E. to grant recognition for a start of new colleges, the State cannot withheld any permission under any policy consideration because the policy in the matter of establishment of a new college (for imparting a course or training in teacher education) is now rests with Central Government (i.e. with N.C.T.E. under the Act, 1993) alone more so in view of the provisions of Sections 16 and Section 17(3) of the Act, 1993 reads as under:</FONT></FONT></FONT></P>

<P ALIGN=JUSTIFY STYLE="margin-right: 1.08in; line-height: 100%; text-decoration: none">

<FONT COLOR="#000000">S<B><FONT SIZE=4><FONT FACE="Courier, monospace">16. Affiliating body to grant affiliation after recognition or permission by the Council.-</FONT></FONT></B></FONT></P>

<P ALIGN=JUSTIFY STYLE="margin-right: 1.08in; font-weight: medium; line-height: 100%; text-decoration: none">

<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>Notwithstanding anything contained in any other law for the time being in force, no examining body <U>shall</U>, on or after the appointed day, </FONT></FONT></FONT>

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<P ALIGN=JUSTIFY STYLE="margin-right: 1.08in; font-weight: medium; line-height: 100%; text-decoration: none">

<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>(a) <U>grant affiliation</U>, whether provisional or otherwise, to any institution; or</FONT></FONT></FONT></P>

<P ALIGN=JUSTIFY STYLE="margin-right: 1.08in; font-weight: medium; line-height: 100%; text-decoration: none">

<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>(b) hold examination, whether provisional or otherwise, for a course or

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 training conducted by a recognised institution. </FONT></FONT></FONT>
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 <P ALIGN=JUSTIFY STYLE="margin-right: 1.08in; line-height: 100%; text-decoration:
none">
 <FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>Unless
 the institution concerned has obtained recognition from the Regional
 Committee concerned, under Section 14 or permission for a course or
 training under section 15.</FONT></FONT></FONT></P>
 <P ALIGN=JUSTIFY STYLE="margin-right: 1.08in; line-height: 100%; text-decoration:
none">
 <FONT COLOR="#000000">S<B><FONT SIZE=4><FONT FACE="Courier, monospace">17.
 Contravention of provisions of the Act and consequences thereof.
</FONT></FONT></B></FONT>
 </P>
 <P ALIGN=JUSTIFY STYLE="margin-right: 1.08in; line-height: 100%; text-decoration:
none">
 <FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>(1)
 Where the Regional Committee is, on its own motion or on any
 representation received from any person, satisfied that a recognised
 institution has contravened any of the provisions of this Act, or
 the rules, regulations, orders made or issued thereunder, or any
 conditions subject to which recognition under sub-section (3) of
 section 14 or permission under sub-section (3) of section 15 was
 granted, <U>it may withdraw recognition of such recognised
 institution, for reasons to be recorded in writing.</U></FONT></FONT></FONT></P>
 <P ALIGN=JUSTIFY STYLE="margin-right: 1.08in; line-height: 100%; text-decoration:
none">
 <FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>Provided
 that no such order against the recognised institution shall be
 passed unless a reasonable opportunity of making representation
 against the proposed order has been given to such recognised
 institution:</FONT></FONT></FONT></P>
 <P ALIGN=JUSTIFY STYLE="margin-right: 1.08in; line-height: 100%; text-decoration:
none">
 <FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>Provided
 further that the order withdrawing or refusing recognition passed by
 the Regional Committee shall come into force only with effect from
 the end of the academic session next following the date of
 communication of such order.</FONT></FONT></FONT></P>
 <P ALIGN=JUSTIFY STYLE="margin-right: 1.08in; line-height: 100%; text-decoration:
none">
 <FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>(2)
 A copy of every order passed by the Regional Committee under
 sub-section (1).</FONT></FONT></FONT></P>
 <P ALIGN=JUSTIFY STYLE="margin-right: 1.08in; line-height: 100%; text-decoration:
none">
 <FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>(a)
 shall be communicated to the recognised institution concerned and a
 copy thereof shall also be forwarded simultaneously to the
 University or the examining body to which such institution for
 canceling affiliation;and </FONT></FONT></FONT>
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<P ALIGN=JUSTIFY STYLE="margin-right: 1.08in; line-height: 100%; text-decoration: none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>(b) shall be published in the Official Gazette for general information.</FONT></FONT></FONT></P>
<P ALIGN=JUSTIFY STYLE="margin-right: 1.08in; line-height: 100%; text-decoration: none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>(3) <U>Once the recognition of a recognised institution is withdrawn under sub-section (1), such institution shall discontinue</U> the course or training in teacher education, and the concerned University or <U>the examining body shall cancel affiliation of the institution</U> in accordance with the order passed under sub-section(1), with effect from the end of the academic session next following the date of communication of the said order.</FONT></FONT></FONT></P>
<P ALIGN=JUSTIFY STYLE="margin-right: 1.08in; line-height: 100%; text-decoration: none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>(4) ..... </FONT></FONT></FONT>
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<P ALIGN=RIGHT STYLE="margin-right: 1.08in; font-weight: medium; line-height: 100%; text-decoration: none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>(Emphasis Supplied)</FONT></FONT></FONT></P>
<P ALIGN=JUSTIFY STYLE="font-weight: medium; line-height: 200%; text-decoration: none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>Aforesaid provisions of the Central Law enjoin that the examining body notwithstanding any thing contained in any other law for the time being in enforce, no examining body shall grant affiliation or held examination unless and until N.C.T.E. has been recognition under Section 14 of the Act, 1993. Once such permission or recognition is given, under Section 14 of the Act, the State, cannot oppose the decision, taken by the National Council for Teachers Education. What cannot be done even by the State Legislation, in repugnance to Central Legislation, it can never be permitted to be done by executive orders which at Annexures P-2 and P-6 to the memo of the petition under the guise of so-called policy decision. The State could not have any policy repugnant to the Central Enactment viz. the Act, 1993.</FONT></FONT></FONT></P>
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<OL START=9>
<LI><P ALIGN=JUSTIFY STYLE="font-weight: medium; line-height: 200%; text-decoration: none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>In view of the aforesaid facts and circumstances of the case, the provisions of various enactments and the pronouncements as referred hereinabove, it is held that annexures P-2 and P-6 issued by the respondent State dated 20.01.2005 and 9.06.2005 will not affect the

recognition which has been granted by National Council for Teachers Education under the Act, 1993. Both these letters of State Government are quashed and set aside. Consequently resolution of the University dated 28.07.2005 (Annexure P-7) is also quashed. The respondent No.1 University has already granted NOC and has already recommended for affiliation of the colleges run by the petitioners trust render Section 34(4) of Saurashtra University Act. In view of mandatory direction given by sub-section 6 of the Section 14 of the Act, 1993, the examining body ought to grant affiliation. Thus, sub-section (6) of Section 14 has an overriding effect upon Section 34 of the Saurashtra University Act, 1965, so far as teacher education (B.Ed. education) is concerned. Once the recognition is granted by N.C.T.E. under the Act, 1993, there is a direction for grant of affiliation by sub-section (6) of Section 14. State Government cannot refuse the grant of affiliation. It ought to have acted on the basis of recognition granted by N.C.T.E. and other relevant factors in the University Act and statutes which are not inconsistent with N.C.T.E. Act, 1993 or its regulations.</FONT></FONT></FONT></P>
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<OL START=10>
<LI><P ALIGN=JUSTIFY STYLE="font-weight: medium; line-height: 200%; text-decoration: none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>Learned Counsel appearing for the respondent No.1 Saurashtra University has submitted that the papers have already been sent to the State Government under Section 34 of the Saurashtra University Act, 1965 thereof and the respondent No.1 University has no objection for the colleges established by the petitioners Trust and SNo Objection Certificate has already been issued on 9.9.2004, which is at Annexure P-1. The respondent No.1 has complied with all the procedure as envisaged under Section 34 of the Act, 1965 for grant of affiliation. The University has no objection, if, the college established by the petitioners, are affiliated but the final decision has to be taken by the respondent No.3 State. The Government Pleader appearing for the respondent State of Gujarat submitted that the direction may be given to the State, and the State will scrutinize the application under Section 34 of the Act, 1965 within a period of two weeks from today.</FONT></FONT></FONT></P>
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<OL START=11>
<LI><P ALIGN=JUSTIFY STYLE="font-weight: medium; line-height: 200%; text-decoration: none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>In view of the aforesaid facts and circumstances of the case, especially when "No Objection Certificate" does not affect the already granted, valid recognition by National Council for Teachers Education, I hereby direct the respondent No.3 State to

decide the application for affiliations which are preferred by the petitioners for their respective college. It is hope and trust that the respondent No.3 shall decide the application under Section 34 of the Act, 1965, keeping in mind the provisions of the National Council for Teachers Education Act, 1993 especially sub-section 6 of the Section 14 thereof and the observations made and judicial pronouncements referred hereinabove on or before 31st of August, 2005. Letters issued by the State State of Gujarat dated 20.01.2005 and dated 9.06.2005 which are at annexure P-2 and P-6 and decision taken by the University at annexure P-7 are hereby quashed. Rule made absolute in all the petitions with no order as to costs.</FONT></FONT></FONT></P>
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<P ALIGN=RIGHT STYLE="font-weight: medium; line-height: 200%; text-decoration: none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>(<B>D.N. PATEL, J.)</B></FONT></FONT></FONT></P>
<P ALIGN=LEFT STYLE="margin-bottom: 0in; font-weight: medium; line-height: 200%; text-decoration: none">
<FONT COLOR="#000000"><FONT FACE="Courier, monospace"><FONT SIZE=4>Hitesh</FONT></FONT></FONT></P>
</BODY>
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